

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Edward Tsigel	Team: Squad #4	CCRB Case #: 202005973	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/01/2020 6:22 PM	Location of Incident: In front of 164 West 116th Street	Precinct: 28	18 Mo. SOL 3/1/2022	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 09/01/2020 10:51 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 09/01/2020 10:51 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Richard Mcknight	07955	955170	NARCBMN
2. POM Edmundo Rivera	00696	955382	NARCBMN
3. PO Brian Mahon	26892	955116	NARCBMN
4. CPT Daniel Campbell	00000	932403	DBMN

Officer(s)	Allegation	Investigator Recommendation
A. PO Richard Mcknight	Abuse: Police Officer Richard Mcknight questioned § 87(2)(b)	
B. PO Richard Mcknight	Abuse: Police Officer Richard Mcknight stopped § 87(2)(b)	
C. POM Edmundo Rivera	Abuse: Police Officer Edmundo Rivera stopped § 87(2)(b)	
D. PO Brian Mahon	Abuse: Police Officer Brian Mahon stopped § 87(2)(b)	
E. PO Richard Mcknight	Abuse: Police Officer Richard Mcknight frisked § 87(2)(b)	
F. POM Edmundo Rivera	Abuse: Police Officer Edmundo Rivera searched § 87(2)(b)	
G. PO Richard Mcknight	Abuse: Police Officer Richard Mcknight failed to provide § 87(2)(b) with a business card.	
H. POM Edmundo Rivera	Abuse: Police Officer Edmundo Rivera failed to provide § 87(2)(b) with a business card.	
I. PO Brian Mahon	Abuse: Police Officer Brian Mahon failed to provide § 87(2)(b) with a business card.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

### Case Summary

On September 1, 2020, § 87(2)(b) filed this complaint on the CCRB website on behalf of § 87(2)(b).

On September 1, 2020, at approximately 6:22 PM, Police Officer Richard Mcknight, Police Officer Edmundo Rivera, Police Officer Brian Mahon, and Captain Daniel Campbell, all of the Narcotics Bureau Manhattan North (NBMN), were on patrol in the 28<sup>th</sup> Precinct when they observed § 87(2)(b) walking on the sidewalk and stopped their vehicle beside him. PO Mcknight allegedly questioned § 87(2)(b) about weapons and narcotics (**Allegation A – Abuse of Authority – § 87(2)(g)**). PO Mcknight, PO Rivera, and PO Mahon exited their vehicle and stopped § 87(2)(b) in front of 164 West 116<sup>th</sup> Street in Manhattan (**Allegations B to D – Abuse of Authority – § 87(2)(g)**). PO Mcknight frisked § 87(2)(b) (**Allegation E – Abuse of Authority – § 87(2)(g)**). PO Rivera searched § 87(2)(b) bag (**Allegation F – Abuse of Authority – § 87(2)(g)**). PO Mcknight, PO Rivera, and PO Mahon failed to provide § 87(2)(b) a business card (**Allegations G to I – Abuse of Authority – § 87(2)(g)**).

§ 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

No arrests were made, or summons issued as a result of this incident.

The CCRB received two cellphone videos and one security camera video of this incident (BR 06).

### Findings and Recommendations

#### **Allegation (A) Abuse of Authority: Police Officer Richard Mcknight questioned § 87(2)(b).**

On September 1, 2021, at approximately 6:22 PM, § 87(2)(b) (BR 01) was walking East on West 116<sup>th</sup> Street in Manhattan. When he reached 164 West 116<sup>th</sup> Street, PO Mcknight, PO Rivera, and PO Mahon, and Capt. Campbell pulled up beside him in an unmarked police vehicle. From the front passenger seat, PO Mcknight asked § 87(2)(b) where he was going, why he was walking so fast, what was in his bag, if he had a gun in his bag, and whether he had any cocaine on him. § 87(2)(b) told him that he was not doing anything and did not have any weapons or cocaine on him.

PO Mcknight (BR 02) did not remember if he asked § 87(2)(b) the above mentioned questions. PO Rivera (BR 03), PO Mahon (BR 04), and Capt. Campbell (BR 05) did not remember if PO Mcknight asked § 87(2)(b) the abovementioned questions.

Security camera footage from a nearby business captured this incident, however the footage does not contain audio. From 0:35 to 0:52 of video 3 (BR 06), the officers pull up beside § 87(2)(b) and PO Mcknight speaks to him from the front passenger seat but there is no audio of the conversation.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

#### **Allegation (B) Abuse of Authority: Police Officer Richard Mcknight stopped § 87(2)(b)**

#### **Allegation (C) Abuse of Authority: Police Officer Edmundo Rivera stopped § 87(2)(b)**

#### **Allegation (D) Abuse of Authority: Police Officer Brian Mahon stopped § 87(2)(b)**

#### **Allegation (E) Abuse of Authority: Police Officer Richard Mcknight frisked § 87(2)(b)**

#### **Allegation (F) Abuse of Authority: Police Officer Edmundo Rivera searched § 87(2)(b)**

It is undisputed that after PO Mcknight spoke to § 87(2)(b) (BR 01) from the vehicle,

PO Mcknight, PO Rivera, and PO Mahon exited the vehicle, approached § 87(2)(b) and stopped him. PO Mcknight frisked § 87(2)(b) waistband area and PO Rivera searched through § 87(2)(b)'s fanny pack. There was no contraband found on § 87(2)(b) as a result of the frisk or search. After § 87(2)(b) was frisked and searched, the officers left the scene without issuing him a summons.

Security camera footage from a nearby business captures the entirety of this incident. At 0:30 of Video 3 (BR 06), § 87(2)(b) is walking on the sidewalk when the officers pull up next to him in their vehicle and PO Mcknight speaks to him from the front passenger seat. At 0:50, PO Mcknight, PO Rivera and PO Mahon exit the vehicle and approach and surround § 87(2)(b). § 87(2)(b) appears to be holding a clear plastic container with an orange liquid in it. Between 1:00 and 1:40, PO Mcknight frisks § 87(2)(b) waistband area and PO Rivera searches through § 87(2)(b)'s fanny pack. The officers then immediately let § 87(2)(b) go and return back to their vehicle and leave the scene.

PO Mcknight (BR 02) stated that he initially observed § 87(2)(b) carrying an open container of alcohol when he observed him walking on the sidewalk which was a violation that could have warranted a summons being issued. He described the container as a clear plastic container with a dark liquid in it. He did not remember if the container had any labels or marking on it. He made this observation from his moving vehicle on the road while § 87(2)(b) was walking on the sidewalk in the opposite direction. § 87(2)(b)'s demeanor was not consistent with that of someone who appeared to be impaired by alcohol. PO Mcknight could not further clarify why he believed that the liquid inside § 87(2)(b)'s container was alcohol. PO Mcknight, PO Rivera, and PO Mahon exited the vehicle, approached § 87(2)(b) and stopped him for the purpose of addressing the open container of alcohol violation.

PO Mcknight stated that he frisked § 87(2)(b) waistband area for the officers' safety and to make sure that § 87(2)(b) did not have any weapons on him. PO Mcknight did not see any weapons on § 87(2)(b) and did not have any reason to believe that he was armed with any weapons. He did not fear for his or the other officers' safety. He stated that he usually frisks someone if he stops them for any violation. He did not remember if he asked § 87(2)(b) for consent to frisk him, or if § 87(2)(b) voluntarily provided consent for PO Mcknight to frisk him. No contraband was found as a result of his frisk. At a certain point, PO Mcknight determined that the liquid in § 87(2)(b)'s container had alcohol but did not remember how he made this determination. The officers then left the scene without issuing § 87(2)(b) a summons. They used their discretion to not issue him a summons because § 87(2)(b) was respectful to the officers during their interaction.

PO Rivera (BR 03) stated that PO Mcknight made an observation which led him to believe that § 87(2)(b) had an open container of alcohol. PO Rivera did not make this observation himself and did not know why PO Mcknight thought that. PO Mcknight, PO Rivera, and PO Mahon exited the vehicle, approached § 87(2)(b) and stopped him for the purpose of addressing the open container of alcohol violation. PO Rivera observed § 87(2)(b) holding a clear plastic cup with a brown liquid in it which smelled like alcohol and resembled the color of Whiskey or Cognac. The plastic container did not have any labels or marking on it. PO Rivera was standing within a few feet of § 87(2)(b) when he smelled alcohol coming from § 87(2)(b)'s breath and the container. He did not remember if the officers or § 87(2)(b) ever confirmed if § 87(2)(b) had alcohol in his container. PO Rivera stated that § 87(2)(b)'s demeanor did not make him believe that he was under the influence of alcohol.

PO Rivera searched through § 87(2)(b)'s fanny pack to make sure that § 87(2)(b) did not have any weapons on him, for the safety of the officers. PO Rivera did not believe that § 87(2)(b) was armed with any weapons but stated that he could have been. He did not believe that § 87(2)(b) had any contraband on him, other than the potential open container of alcohol. He did not see any bulges on § 87(2)(b)'s person or on his fanny pack which resembled any weapons. He did not believe that § 87(2)(b) posed a threat to his or the other officers' safety. He did not

remember if he asked § 87(2)(b) to search his fanny pack. There was no contraband found in the fanny pack as a result of the search. The officers then left the scene without issuing § 87(2)(b) a summons. They used their discretion to not issue him a summons because § 87(2)(b) was respectful to the officers during their interaction.

PO Mahon (BR 04) stated that he participated in the stop of § 87(2)(b) but did not know why the other officers made the decision to stop § 87(2)(b) and only participated in his stop as support for PO Mcknight and PO Rivera. He did not interact with § 87(2)(b) in any way and did not remember how PO Mcknight or PO Rivera interacted with him.

**People v. De Bour, 40 N.Y.2d 210** (BR 07) allows an officer to forcibly stop and detain a person if the officer has reasonable suspicion that the person has committed, is committing or is about to commit a felony or misdemeanor. Reasonable suspicion exists when the information known to the member of the service would make an ordinarily prudent and cautious police officer under the circumstances believes that a felony or Penal Law misdemeanor has been, is being or is about to be committed. The officer must have a particularized and objective basis for suspecting the person stopped of the criminal conduct. The officer must be able to articulate specific facts establishing justification for the stop; hunches or gut feelings are not sufficient. If a police officer develops a reasonable suspicion that a person is armed and dangerous, the officer may frisk the person for a deadly weapon. Reasonable suspicion that a person is armed and dangerous may arise from the officer's observations or the facts and circumstances of the encounter including, reasonable suspicion that the suspect has committed, is committing, or is about to commit a violent crime (e.g., assault with a deadly weapon, burglary, rape, robbery, etc.), observation of something on the person that the officer reasonably suspects is a weapon, a statement by the suspect stopped that she/he is armed, information known by the officer that the suspect may be carrying a weapon, such as statements from a victim or witness. The purpose of the frisk is to ensure the safety of the officer and not to locate evidence of a crime, such as drugs. An officer may not frisk a person's bag or other item of personal property unless the officer has reasonable suspicion to believe that the person is armed and dangerous and that the bag or item of personal property could contain a weapon and is within the person's reach. If a person does not consent to a search, you cannot conduct a search.

**NYC Administrative Code 10-125** (BR 08) states that consumption of an alcoholic beverage (any liquid intended for human consumption containing more than one-half of one percent (.005) of alcohol by volume) is prohibited in a public setting, such as a sidewalk.

**People v Figueroa 36 Misc. 3d 605** (BR 09), which involves an officer stopping an individual for allegedly drinking beer out of a clear plastic cup on a public sidewalk, addresses the level of suspicion an officer must have to stop someone for allegedly drinking in public. The court found that the officer's claim that he saw and smelled what he believed to be beer in the cup was not enough reason for him to believe that the individual was indeed drinking alcohol as the alleged beer could have been another beverage or have not been alcoholic.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

**Allegation (G) Abuse of Authority: Police Officer Richard Mcknight failed to provide § 87(2)(b) with a business card.**

**Allegation (H) Abuse of Authority: Police Officer Edmundo Rivera failed to provide § 87(2)(b) with a business card.**

**Allegation (I) Abuse of Authority: Police Officer Brian Mahon failed to provide § 87(2)(b) with a business card.**

§ 87(2)(b) (BR 01) stated that he was not offered or provided a business card by any of the officers involved in stopping him.

PO Mcknight (BR 02) and PO Rivera (BR 03) both stated that they did not have any business cards on them during this incident and therefore did not offer § 87(2)(b) one. They did not have any business cards on them because this was their first day working in the NMMN command and they had not yet transferred all of their belongings from their old command. PO Mahon (BR 04) did not offer or provide § 87(2)(b) a business card because he did not interact with § 87(2)(b) during the stop, and therefore believed that he was not required to provide one.

As per **New York City Administrative Code §14-174** (BR 10) officers are required to offer a business card to any person at the conclusion of law enforcement activity, including to any person who has been stopped, frisked, or searched, which does not result in an arrest or summons.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 15).
- Police Officer Richard Mcknight has been a member of service for 8 years and has been a subject in 5 other CCRB complaints and 10 allegations, of which 1 was substantiated. 201506961 involved a substantiated allegation of a vehicle search against PO Mcknight. The board recommended formalized training and the NYPD imposed formalized training.
  - 201506961 involved a substantiated allegation of a vehicle search against PO Mcknight. The board recommended formalized training and the NYPD imposed formalized training.
- Police Officer Edmundo Rivera has been a member of service for 8 years and has been a subject in 14 other CCRB complaints and 61 allegations, of which 7 were substantiated.
  - 201607995 involved 6 substantiated allegations of vehicle searches against PO Rivera. The board recommended formalized training and the NYPD imposed formalized training.

- 201605007 involved a substantiated allegation of a stop against PO Rivera. The board recommended command level discipline and the NYPD imposed formalized training.
- Police Officer Brian Mahon has been a member of service for 8 years and has been a subject in 10 other CCRB complaints and 43 allegations, of which 10 were substantiated.
  - 202003847 involved 2 substantiated allegations of using a nightstick as a club, 2 substantiated allegations of physical force, and 1 substantiated allegation of an untruthful statement against PO Mahon. The board recommended charges and the NYPD has not yet imposed discipline.
  - 201808002 involved a substantiated allegation of a stop and a frisk against PO Mahon. The board recommended command level discipline and the NYPD imposed command level discipline.
  - 201804513 involved a substantiated allegation of an entry, a frisk, and “other” against PO Mahon. The board recommended command level discipline and the NYPD imposed formalized training.
- Captain Daniel Campbell has been a member of service for 18 years and has been a subject in 28 other CCRB complaints and 77 allegations, of which 2 were substantiated.
  - 200607138 involved a substantiated allegation of a threat of arrest against Cpt. Campbell. The board recommended command level discipline and the NYPD did not impose any discipline.
  - 201004296 involved a substantiated allegation of a frisk against Cpt. Campbell. The board recommended charges and the NYPD imposed command level discipline.

## Mediation, Civil, and Criminal Histories

- This case was not eligible for mediation.
- § 87(2)(b) filed a notice of claim with the City of New York on behalf of § 87(2)(b) claiming intentional infliction of emotional distress, mental and emotional pain and suffering, emotional injuries and anguish, psychological and mental distress and humiliation, loss of liberty, invasion of privacy, and loss or deprivation of his civil rights and was seeking \$1,000,000 as redress (BR 16). According to the NYC Office of the Comptroller, a 50-h hearing was held on § 87(2)(b).
- According to the Office of Court Administration (OCA), § 87(2)(b) (BR 17), has no history of convictions in New York City.

Squad: 4

Investigator:	<u>Edward Tsigel</u>	<u>Investigator Edward Tsigel</u>	<u>1/11/2022</u>
	Signature	Print Title & Name	Date

Squad Leader: Raquel Velasquez      IM Raquel Velasquez      1/11/2022  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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